

DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

CA05-456

April 26, 2006

JEFFREY PORTER
APPELLANT

APPEAL FROM THE LITTLE RIVER
COUNTY CIRCUIT COURT
[NOS. JV 02-1, JV 04-27]

HON. CHARLES A. YEARGAN,
JUDGE

V.

AFFIRMED

ARKANSAS DEPARTMENT OF
HUMAN SERVICES, ET AL.
APPELLEES

The appellant is the natural father of S.P., a minor who was removed from the home because of physical abuse. Although appellant was not implicated in the abuse of the child, it became apparent subsequent to removal that he was unable to provide an adequate home for her because of instability stemming from chronic use of alcohol and illegal drugs. Approximately two and one-half years after S.P. entered foster care, the trial court terminated appellant's parental rights. On appeal, appellant asserts that the trial court erred in conducting the termination proceedings in appellant's absence without making some inquiry into his whereabouts and the reason for his absence, and that termination of parental rights was not supported by the evidence. We affirm.

Termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Crawford v. Department of Human Services*, 330 Ark. 152, 951 S.W.2d 310 (1997). Pursuant to Ark. Code Ann. § 9-27-341(b)(3)

(Supp. 2005), the facts warranting termination of parental rights must be proven by clear and convincing evidence. Clear and convincing evidence is the degree of proof that will produce in the fact-finder a firm conviction regarding the allegation sought to be established. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). In reviewing the trial court's evaluation of the evidence, we will not reverse unless the trial court clearly erred in finding that the relevant facts were established by clear and convincing evidence. *Id.* In making this determination, we defer to the trial court's evaluation of the credibility of the witnesses. *Crawford v. Department of Human Services, supra.*

The record shows that appellant reported the physical abuse and that the child was initially placed with appellant. Soon thereafter, allegations of drug abuse by appellant resulted in placement with relatives. Relative placement was unsuccessful, and appellant's continued drug use caused unemployment and instability that prevented return of the child to his care. After approximately two years of unsuccessful efforts to discontinue use of illegal drugs, appellant was jailed on drug charges for 120 days and failed to maintain contact with the child for extended periods. After a termination hearing which appellant did not attend, the trial court found that appellant failed to finish court-ordered drug counseling, that there were irregularities with appellant's drug screens, that appellant tested positive for cocaine, and that appellant had been unable to maintain a job for more than six months. These findings are supported by the evidence and, giving due deference to the trial court's superior position to assess credibility, we cannot say that the trial court erred in finding that appellant failed to remedy the conditions that caused S.P. to be removed from his custody.

Appellant also asserts that the trial court erred by failing, *sua sponte*, to investigate the reasons for appellant's absence from the termination hearing before proceeding. This argument is without merit. Appellant received notice of the hearing and was represented by

counsel who did attend the hearing and who neither sought a continuance nor raised the due process argument made on appeal by present counsel. Even constitutional issues are waived when presented for the first time on appeal. *Middleton v. State*, 311 Ark. 307, 842 S.W.2d 434 (1992). Appellant suggests no reason why this rule, applicable to loss of liberty in criminal prosecutions, should not apply when the issue is instead loss of parental rights. Finally, even were the issue properly before us, it has been held that neither due process nor other guarantees confer a right of confrontation on a respondent or require his presence at a termination hearing, so that if a respondent has an opportunity to appear through counsel and is given an opportunity to present evidence and cross-examine witnesses through deposition or otherwise, his due process rights are not violated. *See Cook v. Boyd*, 881 F. Supp. 171 (E.D. Pa. 1995).

Affirmed.

GRIFFEN and ROAF, JJ., agree.